

National Republican Senatorial Committee

June 15, 1999

CLERK OF THE SENATE

SENATOR MITCH MCCONNELL
CHAIRMAN

STEVEN J. LAW
EXECUTIVE DIRECTOR

Mr. Neil Evans

Report Analysis Division

Federal Election Commission

999 E. Street

Washington, DC

99 JUN 15 PM 5:36



RE: RFAI Amended 12 Day Pre-General Report (10/01/98-10/14/98)
RFAI Amended 30 Day Post-General Report (10/15/98-11/23/98)

Dear Mr. Evans:

After reviewing your letters regarding the amended 12 Day Pre-General and 30 Day Post-General Reports, we have amended the chart we provided on March 11, 1999 to correct some disclosure dates and proper names of individuals. In addition, we have amended several reports from the 1998 cycle to correct reporting of the original receipt or memo schedule.

Your second paragraph states that the "chart apparently discloses that the disbursement of earmarked contributions occurred outside of the ten (10) day window permitted." Since the chart actually does not show any disbursement of earmarked contributions, I called you for clarification.

You explained that what the Commission was really now inquiring into is whether a political party committee's deferred earmarking program (in which a donor initiates a subsequent earmark of earlier contributed funds) can be in compliance with 11 C.F.R. 102.8 and 110.6(c)(1)(iii). I again referred you to Advisory Opinions 1981-21 and 1991-29, which the NRSC has cited previously.

You stated that it is the Commission's position that the NRSC cannot rely on those two Advisory Opinions because (1) those opinions were issued for Separate Segregated Funds (SSF) and not to a Party Committee, and that a Party Committee cannot rely on a deferred earmarking Advisory Opinion given to an SSF because of the special or unique relationship a corporate SSF has with its employee donors, and (2) even if the NRSC could rely on those Advisory Opinions in principle, the NRSC does not seem to following them in fact, since those Opinions required separate accounts (literally, separate individual bank depositories) for each contributor that may wish to earmark a prior contribution. The NRSC disagrees with both of these assertions.

1. The Federal Election Campaign Act clearly states that "Any advisory opinion rendered by the Commission under subsection (a) of this section may be relied upon by - ... (B) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered." 2 U.S.C. 437f(c). 11 C.F.R. 112.5(a)(2). The NRSC obviously meets the definition

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of "person" at 2 U.S.C. 431(11). ("The term 'person' includes an individual, partnership, committee, association, corporation ...")

The two Advisory Opinions cited construe the Commission's rules on earmarking, conduit and intermediaries - regulations which are available to all political committees, not just to SSPs. For example, the definition of conduit or intermediary is "any person who receives and forwards an earmarked contribution to a candidate ..." 11 C.F.R. 110.6(b)(2). For purposes of transmitting earmarked contributions, the regulations require that "any person who receives an earmarked contribution shall forward such earmarked contribution to the candidate ... in accordance with 11 C.F.R. 102.8." 11 C.F.R. 110.6(b)(2)(iii).

The NRSC is obviously not seeking to use regulations reserved exclusively for SSPs. See, e.g. 11 C.F.R. 114. It is however, properly using regulations available to all committees, as interpreted by the Commission in Advisory Opinions. The fact that those opinions were issued to SSPs is simply not a 'material' aspect.

2. The NRSC disagrees that the Advisory Opinions we cited require political committees to establish separate, individual bank depositories for each individual donor who may wish to initiate a deferred earmark. In fact, the plain language of both Advisory Opinions clearly establishes this.

Advisory Opinion 1981-21 specifically states that "the individual accounts are 'internal administrative accounts maintained and administered by each separate segregated fund' ... Each individual account is maintained on a separate ledger sheet." AO 1981-21 at page 2. This statement was included in the Opinion after a question was posed to the requester by the Commission: "Are the individual accounts which you describe administrative accounts maintained and administered by each separate segregated fund or are they individual bank accounts opened in the name of each participating individual member?" FEC Letter to AO Requester dated August 26, 1980. FEC Microfilm location 81041021737. The Requester clearly answered: "The individual accounts are internal administrative accounts maintained and administered by each SSP. ... These records will be maintained on an individual ledger sheet." AO Requester response to the Commission dated April 22, 1981. FEC Microfilm locations 81041021726, 81041021734.

Advisory Opinion 1991-29 is similar. The opinion clearly states: "Funds from all individual accounts are kept in one non-interest bearing account administered by Sundstrand at a local bank." AO 1991-29 at page 2. This fact was specifically stated by the Requester in its Advisory Opinion Request, dated July 2, 1991. FEC Microfilm location 91041044692, 693. See also Advisory Opinion 1981-57. Accordingly, the NRSC sees no merit to your suggestion that the Commission now requires individual, separate accounts for each donor wishing to initiate a deferred earmark.

Those opinions were also instructive to the NRSC on how to timely transmit a deferred earmark contribution, and how to report these transactions as well. Specifically, the contributions need to be reported as a receipt by the Committee when received, as the NRSC does. Advisory Opinion 1991-29 at pages 4 and 7; Advisory Opinion 1981-21 at page 3, and the

information the committee needs to report when transmitting the earmarked contribution. Advisory Opinion 1991-29 at page 8 ("The report to the Commission should be included in the Pledge Program's report to the Commission for the reporting period in which the original donor submitted his or her earmarked instructions to the Program. 11 C.F.R. 110.6(c)(1)(ii).") (emphasis added). See also id. at fn. 6.

I would also like to remind you that the reporting of these earmarked contributions was thoroughly discussed at our February 19, 1999, meeting with RAD. As my February 23, 1999, letter to Lisa Stolaruk stated:

At the meeting you suggested a new way for the NRSC to report deferred earmarks. In the future, we will add additional information directly to the "purpose" box of earmarked disbursements on Schedule B supporting Line 23 to note the date of the original contribution was received and when the earmark request was received. We understand this is how you are advising other committees with similar programs. Accordingly if the Attached Exhibit satisfies your concerns, we think this matter is resolved.

In conclusion, I respectfully suggest that this matter is resolved. The NRSC is following the advice the Commission has given on this subject, and the further advice your office has given on reporting these contributions. The NRSC timely reports all its contributions, and when a donor initiates a subsequent earmark, the NRSC timely transmits the contribution and reports the transaction.

Sincerely,



Craig M. Engle
General Counsel

Enclosures as stated

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FOREARY OF THE SENATE
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12 Day Pre General Report

| Donor Name | Date of Original Contribution | Report |
|---|-------------------------------|---|
| Oliver Grace | 10/5/98 | 1998 12 Day Pre-General |
| William Dull Jessy Dull | 4/21/98 | 1998 May Monthly |
| David Pittaway | 1/16/98 | 1998 February Monthly |
| Thomas Kratz | 2/23/98, 5/19/98 | 1998 March Monthly, June Monthly |
| Paul Davies, Barbara Davies (Mrs. Paul) | 8/17/98, 9/28/98 | 1998 September Monthly, October Monthly |
| B. Kenneth Simpson | 3/20/98 | 1998 April Monthly |
| Marek Plenkowski | 7/9/98 | 1998 August Monthly |
| James Burke | 4/17/98 | 1998 May Monthly |
| Francis Carey | 2/23/98, 10/7/98 | 1998 March Monthly, 12 Day Pre-General |

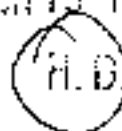
1 Joint Contribution

2 Corrected Date of Contribution

3 Corrected Date of Contribution and new Sept. Monthly Amendment indicating joint contribution (copy of contribution check attached)

FOREARY OF THE SENATE

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30 Day Post General Report

| Donor Name | Date of Original Contribution | Report |
|-----------------------------|--|--|
| Jerry I. Speyer | 4/23/98 | 1998 May Monthly |
| John H. Harris | 8/10/98 | 1998 February Monthly, October Monthly |
| Ralph W. Hooper | 6/15/98 | 1998 September Monthly |
| Thomas Gosnell | 8/24/98 | 1998 September Monthly |
| B. Kenneth Simon | 3/20/98 | 1998 April Monthly |
| Joseph M. Murphy | 7/22/98 | 1998 August Monthly |
| Glenna M. Crooks | 9/17/98 | 1998 October Monthly |
| Mark M. Plenkowsky | 7/9/98 | 1998 August Monthly |
| Bernard H. Mendik | 9/24/98 | 1998 October Monthly |
| Anne S. Ireland (Mrs. R.L.) | 7/22/98 | 1998 August Monthly |
| Kate Ireland | 1/16/98, 3/19/98, 4/16/98, 6/29/98, 10/29/98 | 1998 February Monthly, April Monthly, May Monthly, July Monthly, 30 Day Post-General |
| Richard Oakley | | |

1. Corrected date of contribution
2. Listed as Mrs. Michael J. Schultz on report
3. Corrected Name of contributor, originally listed as Georgia Gosnell (1998)
4. Listed as Mrs. R.L. Ireland on report, see Page 250, Schedule A
5. Listed as Kate Ireland on report, see Page 251, Schedule A

GARY L. SISCO
SECRETARY

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SUPERINTENDENT

MAIL BUILDING
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WASHINGTON, DC 20510-7116
PHONE: 202-224-0322

United States Senate

OFFICE OF PUBLIC RECORDS

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& REGISTRATIONS** _____

Date of Receipt

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COMMISSION** _____

Date of Receipt

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Postmarked

☐ **REGISTERED/CERTIFIED MAIL** _____
Postmarked

☐ **NO POSTMARK**

☐ **POSTMARK ILLEGIBLE**

☐ **OTHER (Specify):** _____

Postmark and/or Date of Receipt

Elw June 15, 1999
Preparer Date Prepared

9902051901